THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23865 OF 2005

ORDER:

This writ petitioner is filed seeking a *mandamus* declaring the action of the 2nd respondents-Bank in issuing possession notice dated 26.10.2005 under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitisation Act"), without complying with the mandatory requirement of Section (3-A) of Section 13 of the Securitisation Act, as arbitrary and illegal.

It is not in dispute that the petitioners who are the partners of M/s B.R.C. Constructions, a registered partnership firm, availed financial assistance from the 2nd respondent-Bank and committed default in repayment of the same. The respondents having invoked the provisions of the Securitisation Act, issued separate demand notices dated 27.3.2004 under Section 13(2) of Securitisation Act calling upon the petitioners to pay the amounts outstanding under the loan account together with interest within 60 days from the date of receipt of the said notice, failing which the securities created in favour of the 2nd respondent-Bank would be enforced exercising the power conferred under the Securitisation Act. The petitioner states that having received the same, they submitted their explanations dated 25.4.2004 and 14.7.2004, respectively, to the 2nd respondent-Bank. It is alleged that they have not received any communication from the respondent-Bank either accepting or rejecting the objections raised by them, but, on the other hand, the 2nd respondent had issued notices dated 26.10.2005 under Section 13(4) of the Act taking possession of the secured assets. Aggrieved by the said action, this writ petitioner is field, contending *inter alia* that it is mandatory on the part of the respondents under sub-section (3-A) of Section 13 of the Securitisation Act to consider the objections raised by the

borrower, and in case the objections are not acceptable the reasons for non-acceptance should be communicated to the borrower. It is contended that since the respondents failed to consider the objections raised by the petitioners, the impugned notice issued under Section 13(4) of the Securitisation Act is vitiated and liable to be set aside on that ground alone.

It is also pleaded by the petitioners that their partnership firm has invested huge amounts in the pipeline work of Gujarat Water Works and Sewerage Board and about Rs.5.00 crore is yet to be received from the Gujarat Water Works Department towards the work executed by them. Since a dispute is pending before the Arbitrator for recovery of the said amount, the amount due to the respondents under the loan account could not be paid. That apart, the amounts specified in the notice issued by the respondents also did not tally with the alleged amount due from the petitioners and, therefore, they disputed the quantum of liability in their objections. In the circumstances, the respondents are bound to consider the representations made by the petitioners before taking steps under sub-section (4) of Section 13 of the Securitisation Act.

A counter-affidavit has been filed on behalf of the respondents contending that the representations dated 23.5.2004 and 14.7.2004, made by the petitioners seeking withdrawal of Section 13(2) notices were considered by the respondents and a detailed reply dated 25.11.2004 was sent to the petitioners by registered post stating that their objections are not acceptable. However, the said notices were returned 'not served' and, therefore, the respondents have sent copies of the said reply dated 25.11.2004 "Under Certificate of Posting' on 13.12.2004. It is alleged that the petitioners had deliberately avoided receiving the registered covers addressed to them and they must have received copies of the reply sent through Certificate of Posting, but suppressing the said fact, this writ petitioner has been filed. Thus, it is contended that the allegation that the objections raised by the petitioners were not considered is incorrect. It

is also stated that the 1st petitioner anticipating action by the respondent-Bank against the secured assets, got filed a collusive suit through his daughter claiming partition of the properties mortgaged to the Bank. In the said suit - O.S.No.209 of 2003 on the file of the Court of Additional Senior Civil Judge, Eluru, though initially an ex *parte ad-interim* injunction was granted on 12.11.2003 restraining the respondents-Bank from dealing with the properties mortgaged, the said order was vacated at the instance of the respondent-Bank by order dated 12.11.2003. Thereafter, the petitioners herein got filed C.M.A.No.4663 of 2004 through their daughter before this Court and obtained an *ex parte* interim injunction. Ultimately, the said C.M.A. was also dismissed on merits by this Court by Judgment dated 23.9.2005. Thereafter, the impugned notice dated 26.10.2005 was issued proposing to take possession of the secured assets. Thus, it is contended that the entire action of the respondents is in accordance with law and that the objections raised by the petitioners are untenable and the writ petition is liable to be dismissed.

I have heard the learned counsel for both the parties and perused the material on record.

It is to be noted that sub-section (3-A) was inserted by way of amendment to the Securitisation Act by virtue of enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 with effect from 11.11.2004. Thus, as a matter of fact, by the date of notices issued by the respondents under Section 13(2) of the Securitisation Act i.e., 26.3.2004 and 27.3.2004, in response to which the petitioners had submitted their objections dated 25.5.2004 and 14.7.2004, sub-section (3-A) of Section 13 was not in force. Consequently, it cannot be said that it is mandatory on the part of the respondents to communicate the reasons for non-acceptance of the objections raised by the petitioners. Therefore, on that ground the subsequent proceedings cannot be held to be vitiated. At any rate, the material on record shows that as a matter of fact, the objections raised

by the petitioners were considered and replies were sent to the petitioners on 25.11.2004 itself.

For the aforesaid reasons, I do not find any justifiable reason to hold that the impugned action of the respondents is not in conformity with the provisions of the Securitisation Act.

Even otherwise, Section 17 of the Securitisation Act provides an alternative remedy to the borrowers, in case they are aggrieved by any of the measures initiated under sub-section (4) of Section 13 of the Securitisation Act by making an application before the Debts Recovery Tribunal having jurisdiction in the matter. Without exhausting such an alternative remedy available under the Securitisation Act, the petitioners cannot invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Viewed from any angle, the writ petition is misconceived and the same is hereby dismissed. However this shall not preclude the petitioners to work out alternative remedy available under the Act, if so advised. No costs.

G. ROHINI, J.

Dt.14-6-2007
Note: Issue CC in three days.
(Bo)

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23865 OF 2005

DATED:14-06-2007

Between:

B.V. Raghaviah Chowdary and another. ... Petitioners.

And

General Manager,
Union Bank of India, 12/13,
Kodambakkam High Road,
Nungambakkam, Chennai and another. .. Respondents